

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**MEMORANDUM AND ORDER**

**REAGAN, District Judge:**

Plaintiff Anthony Gay, a prisoner in the Tamms Correctional Center, has filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983. He also seeks to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

A prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). In the Seventh Circuit, a strike may be counted if any portion of an action is dismissed for these enumerated grounds. *See George v. Smith*, 507 F.3d 605, 607-08 (7<sup>th</sup> Cir. 2007); *Boriboune v. Berge*, 391 F.3d 852, 855 (7<sup>th</sup> Cir. 2004).

Gay has had three or more prior prisoner actions dismissed, or partially dismissed, on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be

granted. *See, e.g., Gay v. Powers*, Case No. 98-cv-772-GPM (S.D. Ill., filed Oct. 26, 1998) (dismissed as legally frivolous and for failure to state a claim); *Gay v. Page*, Case No. 99-cv-365-MJR (S.D. Ill., filed May 26, 1999) (dismissed for failure to state a claim); *Gay v. Montgomery*, Case No. 99-cv-366-GPM (S.D. Ill., filed May 26, 1999) (dismissed as legally frivolous); *Gay v. Welbourne*, Case No. 00-cv-029-GPM (S.D. Ill., filed Jan. 5, 2000) (dismissed as legally frivolous). Further, the allegations in the instant complaint do not show that Gay is under imminent danger of serious physical injury.<sup>1</sup>

Accordingly, the motion for leave to proceed *in forma pauperis* is **DENIED**. This action is **DISMISSED** without prejudice to Gay bringing this claim in a fully pre-paid complaint.

The Clerk shall **CLOSE THIS CASE**.

**IT IS SO ORDERED.**

**DATED this 11<sup>th</sup> day of June, 2010.**

s/ Michael J. Reagan  
**MICHAEL J. REAGAN**  
**United States District Judge**

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<sup>1</sup> The subject matter of this action is eye glasses. Gay's glasses were scratched, so he turned them in to Defendant Williams, the optometrist, for replacement. However, he has not received replacement glasses.